

/

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.	10/789,435	Confirmation No.: 5695
Applicant(s):	Adrian Buckley	
Filed:	February 27, 2004	
Group Art Unit:	2617	
Examiner:	Sam Bhattacharya	
Title:	Method and System For Wireless Channel Selection by a Mobile Device	
Docket No.:	1578.702 (11609-US-PAT)	
Customer No.:	44208	

Mail Stop Petition
Commissioner of Patents
P.O. Box 1450
Alexandria, VA 22313-1450

VERIFIED STATEMENT OF FACTS OF ROBERT H. KELLY

Dear Sir:

I, Robert H. Kelly, affiant herein, state and declare as follows

1. I am a patent attorney, registered to practice before the USPTO, registration number 33,922.
2. I have represented Research In Motion, Ltd., a Canadian company having a primary place of business of 295 Phillip Street, Waterloo, Canada NTL 3W8, before the USPTO in various matters, dating back to 2002.
3. The subject patent application was prepared by Fraser D. Rowand, of Ridout and Maybee, LLP, a Canadian law firm having offices in Ontario, Canada.

4. I received instructions from the offices of Ridout and Maybee on February 25, 2004 to file the patent application on behalf of Research In Motion on February 27, 2004.

5. The claimed invention has four co-Inventors, three of whom are residents of Canada and a fourth who is a resident of the United States. Namely, the Inventors are: Adrian Buckley, a resident, on the filing date, of Brentwood, California, USA, Craig Dunk, a resident, on the filing date, of Guelph, Ontario, Canada, Vytautas Robertas Kezys, a resident, of the filing date, of Ontario, Canada, and Russel Owen, a resident, on the filing date, of Ontario, Canada.

6. I filed the patent application on 27 February 2004 with the USPTO.

7. Upon information and belief, corresponding instructions were also provided to a European associate to file the corresponding patent application in the European patent office on the same date, that is, 27 February 2004.

8. A European patent application, substantially identical to the corresponding patent application filed in the USPTO was filed on 27 February 2004.

9. The subject matter of the patent application was not under a secrecy order at the time it was filed abroad, and it is not currently under a secrecy order.

10. In many other patent matters, some of may own authorship, and some, such as the subject patent application, prepared elsewhere and provided to me for filing, that I handled on behalf of Research In Motion, Ltd., the inventors resided in Canada, or elsewhere outside of the United States. With those other patent matters, I regularly caused patent applications to be filed both before the USPTO and the EPO on the concurrent dates pursuant to standard operating instructions of Research In Motion.

11. When I received instructions to file the subject patent application with the USPTO, I did not consider the need to first obtain a foreign filing license, and I did not notify personnel at Ridout and Maybee, at which the subject patent application was authored, of the need to obtain foreign filing license. I believe that I permitted the patent application to be filed abroad through error and without deceptive intent without first obtaining the required license as I failed even to consider any issue regarding the foreign filing license.

12. Research In Motion, Ltd. has standard operating instructions relating to foreign filing licenses that state in pertinent part, "prior to filing or initiating the filing of a patent application in a non-US patent office, a non-US patent agency, or an international agency other than the U.S. Receiving Office, you must determine whether or not a foreign filing license will be required from the U.S. Patent and Trademark Office." This standard operating instruction was in place as of the date of filing of the European patent application.

13. I did not review the standard operating instructions at the time of filing of the European patent application. I believe that I permitted the patent application to be filed abroad through error and without deceptive intent without first obtaining the required license further as I failed to review the standard operating instructions that would have refreshed my recollection and alerted me to the need first to obtain the foreign filing license.

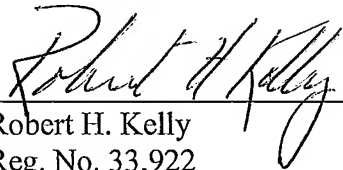
14. A foreign filing license in the above-captioned patent application was granted by the USPTO on 19 May 2004 together with issuance of the filing receipt.

15. I was alerted to the problem relating to the filing abroad of the patent application without first obtaining the foreign filing license during preparation of a response to an Office Action dated 5 July 2004 issued by the USPTO.

16. I am aware that willful false statements and the like are punishable by fine or imprisonment, or both (18 U.S.C.1001) and may jeopardize the validity of the application and any patent issuing thereon. I further declare that all statements made of my own knowledge are true and that all statements made on information and belief are believed to be true.

Respectfully submitted,

Dated: 10 April 08


Robert H. Kelly
Reg. No. 33,922

SCHEEF & STONE, L.L.P.
5956 Sherry Lane, Suite 1400
Dallas, Texas 75225
Telephone: (214) 706-4201
Fax: (214) 706-4242
robert.kelly@scheefandstone.com